

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

February 10, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:05od-274

OAHU

Grant of Term, Non-Exclusive Easement to May S. Ishimoto for
Seawall and Filled Land Purposes, Kaneohe, Koolaupoko, Oahu,
Tax Map Key: (1) 4-5-001:035 seaward.

APPLICANT:

May S. Ishimoto, widow, Tenant in Severalty, whose mailing
address is 45-010 Lilipuna Road, Kaneohe, Hawaii 96744.

LEGAL REFERENCE:

Section 171-13 and -53(b), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land situated at Kaneohe, Koolaupoko, Oahu
and located seaward of the property, identified by Tax Map Key:
(1) 4-5-001:035, as shown on the attached map labeled Exhibit A.

AREA:

1,275 square feet, more or less, to be determined by Department
of Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO X

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing seawall and filled land over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

55 years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

During a recent review, Office of Conservation and Coastal Lands (OCCL) staff observed the subject encroachment and determined it appeared to be built before 1974, prior to the enactment of the EIS law and this action is therefore exempt from Ch. 343.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment; and
- 2) Obtain a title report to ascertain ownership, where necessary, at Applicant's own cost and subject to review and approval by the Department.

REMARKS:

Applicant is one of the owners participating in the Kaneohe Bay Piers Amnesty Program. During the preparation of a map for the pier lease, the survey map submitted by the applicant's land surveyor reflected the subject seawall and filled land encroachment, with a total area of 1,275 square feet. A copy of the survey map is attached as Exhibit B.

OCCL will not pursue this matter as a Conservation District violation since it is apparent that the improvements were made sometime in the 1960s, between 1959 and 1967. Further, OCCL

determined that public access would not be enhanced by removal of the encroachment. The area is not suitable for shoreline access and boating and fishing would not be affected. OCCL has no objection to a disposition request being processed. A copy of OCCL's comments is attached as Exhibit C.

Aquatic Resources Division of the Department, Office of Hawaiian Affairs and the Commission on Water Resource Management have no objection to the request. Department of Health, Historic Preservation Division of this Department, and Department of Planning and Permitting of the City & County of Honolulu have not responded as of the suspense date.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17 which established criteria for imposing fines for encroachments, staff is recommending a fine of \$500 as the subject encroachment is over 100 square feet.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

There are no other pertinent issues or concerns.

RECOMMENDATION: That the Board:

1. Impose a \$500 fine for illegal encroachment, under Section 171-6(12).
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 4-5-001:035, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to May S. Ishimoto covering the subject area for seawall and filled land purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 4-5-001:035, provided that when the easement is sold, assigned, conveyed, or otherwise

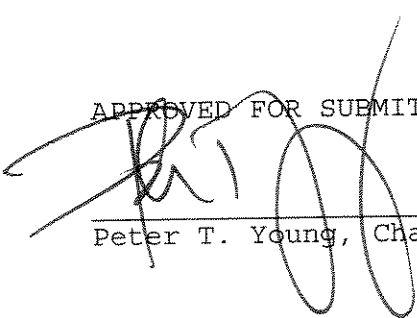
transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;

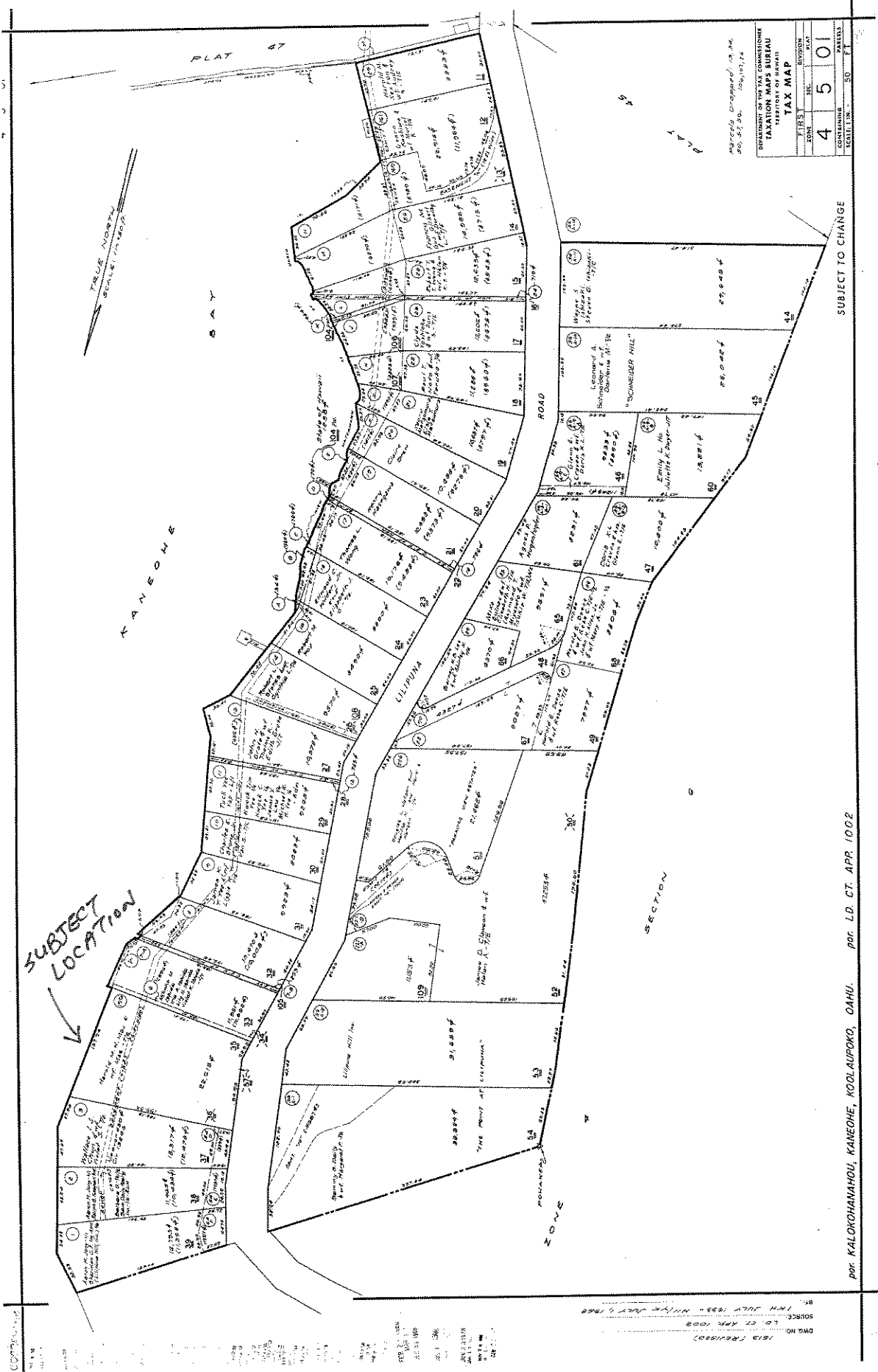
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,


Barry Cheung
Land Agent

APPROVED FOR SUBMITTAL:


Peter T. Young, Chairperson



RECEIVED OCTOBER 19, 1960
OCT 19 1960

DEPARTMENT OF THE TAX COMMISSIONER
TAXATION MAPS BUREAU
TAX MAP

EDITION	4
SECTION	5
ALLOT	01
PAGES	50

SUBJECT TO CHANGE

FOR: KALOKOHANAHOU, KANEONE, KOOLAUPOKO, OAHU. FOR: L.D. CT. APR. 1002

EXHIBIT "A"

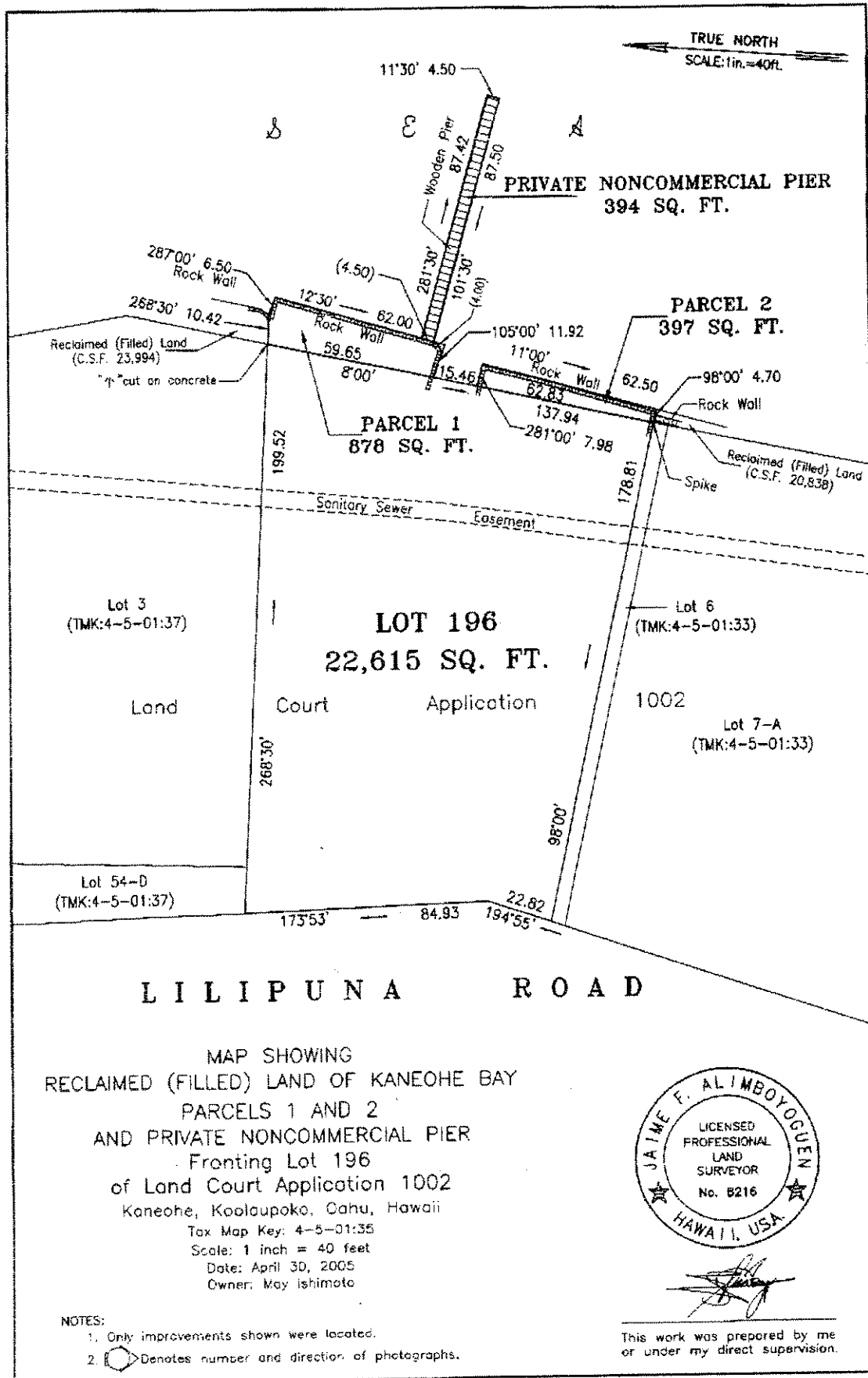
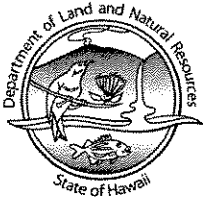


EXHIBIT "B"

LINDA LINGLE
GOVERNOR OF HAWAII



PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

RECEIVED
LAND DIVISION
2006 JAN 12 A 9:15
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONNECTION AND RESOURCES ENFORCEMENT
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
ISLAND
STATE PARKS
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII
JAN 11 2006

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

Office of Conservation and Coastal Lands
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

REF:PB:SL

File Number Encroachment: OA-06-07

MEMORANDUM:

TO: Barry Cheung, Land Agent
Oahu District Land Office

FROM: Sam Lemmo, Administrator
Office of Conservation and Coastal Lands

Subject: Shoreline Encroachment at Kaneohe Bay, Island of Oahu - TMK: (1) 4-5-1:35

This is in response to your December 15, 2005 letter to resolve the subject encroachment at Kaneohe, Oahu

According to information and maps contained within this request, there appears to be an encroachment consisting of a CRM seawall and fill running along most of length of the seaward boundary of the subject property.

OCCL staff was unable to locate any construction permit or other land use authorization permits at the State or at the County Planning/Building Department for the subject improvements. An aerial photograph from 1967 indicates the presence of a seawall along several properties including parcel 35. The 1959 aerial photo shows that there is no wall along the seaward face of the property.

The OCCL will not pursue this matter as a Conservation District violation since it is apparent that the improvements were made sometime in the 1960s, between 1959 and 1967. We would not be able to determine at this time if the proposed use violated conservation district regulations that were in effect in 1964. The applicant has shown good faith in attempting to rectify the encroachment so they may certify their shoreline. As a consequence, DLNR does not consider the encroachment a Conservation District violation and will not be asking for an after-the-fact Conservation District Use Application to cure this matter.

The Board of Land and Natural Resource (BLNR) recently established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

EXHIBIT "C"

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

In addition, the Department developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide the Department's decisions on the disposition of shoreline encroachments. This form has been completed and submitted.

Surrounding Land Uses:

The surrounding uses are residential in nature.

Beach Resources:

The tidal area is a mud flat.

Public Access:

Public access to the shoreline is poor. The area is not suited to beach recreation. However, the waters offshore are popular for boating recreation.

Effect of Removing the Encroachment on:

Beach Resources: The removal of the encroachment could have a negative impact on coastal waters, if done improperly. Removal of the wall without immediate placement of erosion control measures could result in sedimentation of state waters.

Public Access: OCCL staff has determined that public access would not be enhanced by removal of the encroachment. The area is not suitable for shoreline access. Boating and fishing would not be affected.

Affect on Adjacent Properties: It is not know what effect removal of this fill would have on the surrounding parcels, but is likely that removal would cause some flanking of the adjacent properties.

Upon review and careful consideration of the information gathered on this case, staff has determined that allowing the encroachment to remain through the issuance of an easement would have no adverse impacts on natural resources, including beach resources and public access. Therefore, the OCCL has no objections to a disposition request being processed. Pursuant to Chapter 171, the landowner is required to obtain a land disposition (normally a term easement in these cases) for the use of public lands, and you may be subject to a \$500 fine for the encroachment.

We hope this letter helps resolve some of the outstanding issues regarding the subject property. Please feel free to contact Sam Lemmo, of the Office of Conservation and Coastal Lands at 587-0381.